

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. If tangible personal property is not transferred, tax is not incurred. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

August 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated April 7, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

We are CPA's for a company (referred to as XYZ) that is contemplating bidding and performing services in your state as they have had many requests from their multi-state clientele to expand their service area. In an effort to prepare the most accurate proposals, we would like to get an official determination regarding the taxability of the services they perform. The industry and services performed are described below.

XYZ is in the business of cleaning boilers and related air handling equipment at coal fired power plants. The work is performed for both publicly and privately owned power plants. XYZ utilizes methodologies to perform this cleaning function as follows:

1. High pressure water technology with pressures between 10,000 to 40,000 PSI to clean interior surfaces of the boilers. XYZ has engines and pumps that are mounted on flatbed trailers which are parked on the plants premises and hooked up to the plants' water hydrants. The high pressure water is used to knock off the coal 'slag' residues on the interior boiler walls.
2. Abrasive blasting technology to clean the air scrubber parts of the plant. This involves media blasting to the various air handling and air cleaning interior parts of the plant.
3. Industrial vacuum trucks to clean various areas in the plant. The industrial vacuum trucks are mounted on a semi-truck chassis. The vacuum work usually consists of cleaning duct work and areas clogged by coal residue or the ash product left over from the combustion process.

Based upon the specialty work being performed, we believe that these services are not subject to sales tax. Please confirm or deny our interpretation of your sales tax code.

Thank you for your prompt attention to this matter. If you have any additional questions, please feel free to call.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. If tangible personal property is not transferred, tax is not incurred. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax can be calculated: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for

Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.